


Supersedes: DSP- 2010-12 and DCFS 98-14

To: DCF Area Administrators
Child Placing Agency Directors Child Welfare Agency Directors
County Departments of Community Programs Directors
County Departments of Developmental Disabilities Services
Directors County Departments of Human Services Directors
County Departments of Social Services
Directors Group Home Providers
Tribal Social Service/Indian Child Welfare
Directors Private Child Placing Agencies
Residential Care Center Providers
Shelter Care Providers
Tribal Chairpersons

From: Fredi-Ellen Bove 
Administrator

Re: Appeal Procedures for Substantiated Determinations of Child Abuse or Neglect

PURPOSE

This memo outlines specific requirements and changes to the Appeals process for substantiated findings, now referenced as determinations, of Child Abuse or Neglect as outlined in the upcoming Administrative Rule, Wisconsin DCF 40. Effective January 1, 2015, Wisconsin Statutes, Section 48.981 (3) (c) 5m. and 5p., as affected by 2013 Wisconsin Act 20, create a new statewide appeals process for determinations of child maltreatment by a county department or the Bureau of Milwaukee Child Welfare (BMCW). In addition to outlining the specific requirements, this memo provides additional detail related to compliance with appeals documentation requirements between the effective date of January 1, 2015 and the eWiSACWIS 5.3 Release on February 14, 2015. This memo supersedes the following memos: DSP 2010-12 and CFS 98-14.

BACKGROUND

The federal Child Abuse Prevention and Treatment Act (CAPTA) requires that persons have access to due process associated with a substantiated finding of child maltreatment. State statute and policy were enacted to support agency requirements related to due process rights and included requirements for two (2) types of appeal processes. As per Memo CFS 98-14, in circumstances where employment could be negatively impacted by a substantiation determination, individuals were afforded an administrative appeals procedure described in Chapter 68 of the Wisconsin statutes, while other individuals were afforded an agency formal review process. The current memo supersedes these requirements by affording all individuals the same right to receive due process, regardless of current employment circumstances. As per memo DSP 2010-12, agencies are required to utilize templates and appeals process tracking in eWiSACWIS. The current memo continues this requirement, however, also describes the changes in forms, functionality and tracking affected by the new process.

The requirements of DCF Administrative Rule 40, as affected by 2013 Wisconsin Act 20, were developed with an advisory group of representatives from the Wisconsin County Human Services Association and based on several federal court findings in response to a class action law suit, Dupuy vs. Samuels in Illinois.

POLICY AND PROCEDURE REQUIREMENTS

Effective January 1, 2015, county agencies and the BMCW are required to provide an individual who has an initial determination of substantiated child maltreatment with an opportunity for an agency review of the decision prior to establishing a final determination of substantiated child maltreatment. Once a final determination has been made, the agency is required to notify the individual, in writing, of the decision, provide the individual with information regarding his/her rights to a contested case hearing by Wisconsin's Division of Hearings and Appeals (DHA) and the procedures by which the person may receive that hearing.

Agency requirements with this process include the following core responsibilities and timeframes (see attachments for additional details regarding these requirements):

- Initial Determination of Substantiated Child Maltreatment: By the day following the approval of an Initial Assessment, the agency must send a notice of initial determination of substantiated child maltreatment. An individual has fifteen (15) days to respond to the notice to request an Agency Review. An initial determination of substantiated child maltreatment may not be held in abeyance pending the outcome of any criminal proceedings or any proceedings under Section 48.13 or 938.12, Stats.
- Agency Review of an Initial Determination of Substantiated Child Maltreatment: If an individual requests an Agency Review, the agency must send a letter notifying the individual of the date, time and location of the Agency Review within fifteen (15) day of receipt of the request. The agency must hold the review within forty-five (45) days of receiving the request.
- Final Determination of Substantiated Child Maltreatment: If the individual does not request an agency review within fifteen (15) days from the date the agency sent the notice of initial determination of substantiated child maltreatment, the agency must send a notice of final determination of substantiated child maltreatment within five (5) days from the date the request was due. If an agency review was held, the agency must make a final determination of substantiated child maltreatment within ten (10) days of the date the agency review was held, and must send the notice of final determination of substantiated child maltreatment within five (5) days of making the final determination.
- Division of Hearings and Appeals (DHA) Contested Case Hearing: The individual has the right to a DHA contested case hearing whether or not he/she has participated in an agency review. The individual has ten (10) days from the date of the notice of final determination to request a DHA hearing. The DHA must hold the contested case hearing within ninety (90) days of the individual's request, and must render a decision within sixty (60) days of the hearing. The DHA may hold the process in abeyance pending criminal proceedings.

eWiSACWIS DOCUMENTATION

Between the effective date of January 1, 2015 and the 5.3 eW iSACWIS Release scheduled to occur on February 14, 2014, notification template and tracking functionality will not be available in eW iSACWIS. Links to manually fillable forms, available on the Department's forms website, are included with this memo and are to be used for any of the required agency Notice and Agency Review documentation between January 1 and February 14, 2015. The agency is required to maintain diligent records of all appeals-related correspondence prior to the eWiSACWIS release and should utilize current eWiSACWIS functionality prior to February 15, 2015. Further, the Department recommends scanning and uploading all such documentation to the eWiSACWIS case record where such correspondence occurs prior to February 15, 2015.

With the 5.3 eWiSACWIS Release, new functionality will be introduced which will automatically calculate

due dates based on the worker entered information to support tracking and monitoring of the appeals processes and timelines and will introduce pre-filled templates related to required notification documents. The Division is in the process of developing an CPS Appeals Monitoring Report (SM06a114) which will be available in eWReports beginning January 9, 2015 and will allow agencies and the Department to monitor the requirements set forth in this memo. The will be produced on a daily basis and can be run on demand for any given time period.

ACTION SUMMARY

Agencies are responsible for implementing the new processes and related timelines for all Initial Assessments approved on or after January 1, 2015 which includes any finding of substantiated maltreatment for one or more individuals. A flow chart highlighting this process, agency requirements and agency due dates, as described above, is attached. The Department will provide a series of interactive webinars to support initial implementation of the CPS appeals related requirements as follows:

- Tuesday, January 6, 2015 from 9:30-10:30 a.m.
- Thursday, January 8, 2015 from 1:30 - 2:30 p.m.
- Tuesday, January 13, 2015 from 10:00 -11:30 a.m.

To register for the webinars, please send an email to Noelle Brunetti at NoelleE.Brunetti@wisconsin.gov, who will respond with registration and access information. The webinar will be recorded and available for future access.

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MEMO WEB SITE: <http://dcf.wisconsin.gov/memos>

Attachments:

- [Wisconsin Chapter DCF 40, Review of a Determination of Child Abuse or Neglect Appeals Process Requirements](#)
- [CPS Appeals Flowchart](#)

Forms:

- [DCF-F-5035-E Notice of Initial Determination of Substantiated Child Maltreatment and Right to Request a Review](#)
- [DCF-F-5036-E Notification of Initial Determination of Substantiated Child Maltreatment Scheduled Review](#)
- [DCF-F-5037-E Notification of Initial Determination of Substantiated Child Maltreatment Re- Scheduled Review](#)
- [DCF-F-5038-E Notice of Final Determination of Substantiated Child Maltreatment and Right to Request an Appeal](#)